

*In the Matter of Vocational Rehabilitation Counselor 1,
Vocational Rehabilitation Counselor 1 (Deaf Language Specialist),
and Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English),
Department of Labor and Workforce Development and
Department of Human Services
DOP Docket No. 2006-4256
(Merit System Board, decided August 9, 2006)*

The Director, Division of Human Resource Management (HRM), requests the permanent reallocation of the Vocational Rehabilitation Counselor 1, Vocational Rehabilitation Counselor 1 (Deaf Language Specialist), and Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English) titles to the noncompetitive division of the career service.

The Department of Labor and Workforce Development (Labor) requests that the entry level title, Vocational Rehabilitation Counselor 1 and its variants be allocated to the noncompetitive division due to recruitment difficulties. Specifically, Labor asserts that it has always had difficulty in recruiting qualified candidates for the subject titles. This recruitment problem increased when the federal Department of Education required it to elevate the educational requirement to a Master's degree. Additionally, Labor states that between June 2000 and February 2003 three lists for the subject titles were promulgated. In this regard, Labor contends that while the February 2003 list contained 54 names, it was only able to make 13 appointments, which left them with over 20 vacancies. Labor argues that moving the subject title to the noncompetitive division will enable it to meet recruitment needs as they arise. Further, Labor states that it will abide by *N.J.A.C. 4A:5-2.3* regarding veterans preference and would recruit as widely as possible.

The Director of HRM states that it conducted an analysis of announcement and certification activity that supports Labor's request. Specifically, HRM reviewed the open competitive announcements for the subject titles in 2005 and found that each title had one examination announcement which produced eligible lists with an insufficient number of eligibles to fill existing vacancies.

The Department of Human Services, which also utilizes the subject titles, has been notified of this action and does not object. In addition, the appropriate union representatives have been apprised of this request and they do not object.

A review of Department of Personnel records reveals that there is no active open competitive list for Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English). However, there are two active open competitive eligible lists for Vocational Rehabilitation Counselor 1, *i.e.*, (S0335F) which promulgated on November 11, 2004, expires on May 10, 2007, and contains one name and (S0464G)

which promulgated on December 1, 2005, expires on November 30, 2008 and contains the names of five eligibles. Moreover, there is one active open competitive eligible list for Vocational Rehabilitation Counselor 1 (Deaf Language Specialist) (S0463G), which promulgated on December 1, 2005, expires on November 30, 2008 and contains the names of two eligibles. Labor has indicated that it intends to exhaust these lists before hiring applicants on a noncompetitive basis. In this regard, HRM requests that the subject titles be allocated to the noncompetitive division of the career service the pay period following the exhaustion of the Vocational Rehabilitation Counselor 1 (S0335F) and (S0464G) eligible lists and the Vocational Rehabilitation Counselor 1 (Deaf Language Specialist) (S0463G) eligible list.

CONCLUSION

N.J.A.C. 4A:3-1.2(c) provides that a job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commissioner that it is appropriate to make permanent appointments to the title, and that one or more of the following criteria are met:

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

Based on the present record, permanent reallocation of the Vocational Rehabilitation Counselor 1, Vocational Rehabilitation Counselor 1 (Deaf Language Specialist), and Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English) titles to the noncompetitive division of the career service is appropriate in this matter. Labor has demonstrated that it has encountered recruitment problems in hiring for the subject titles, thereby meeting the criteria set forth in *N.J.A.C.* 4A:3-1.2(c)2. Accordingly, effective the pay period following the exhaustion of the Vocational Rehabilitation Counselor 1 (S0335F) and (S0464G) eligible lists and the Vocational Rehabilitation Counselor 1 (Deaf Language Specialist) (S0463G) eligible list, the Vocational Rehabilitation Counselor 1, Vocational Rehabilitation Counselor 1 (Deaf Language Specialist), and Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English) titles are to be placed in the noncompetitive division of the career service.

ORDER

Therefore, it is ordered that this request be granted, and the Vocational Rehabilitation Counselor 1, Vocational Rehabilitation Counselor 1 (Deaf Language Specialist), and Vocational Rehabilitation Counselor 1 (Bilingual in Spanish and English) titles are to be placed in the noncompetitive division of the career service effective the pay period following the exhaustion of the Vocational Rehabilitation Counselor 1 (S0335F) and (S0464G) eligible lists and the Vocational Rehabilitation Counselor 1 (Deaf Language Specialist) (S0463G) eligible list.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.